

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of June, two thousand eighteen.

Present:

Pierre N. Leval,
Guido Calabresi,
Debra Ann Livingston,
Circuit Judges.

National Labor Relations Board,

Petitioner,

18-1072

v.

9th Avenue Hotel Property Holding LLC, DBA Cassa Hotel
Times Square, VIP Concierge, Inc., A&R Building Solution, Inc.,
as Joint Employers, Local 713 International Brotherhood of
Trade Unions,

Board Nos:
02-CA-201747
02-CA-201748
02-CA-201749

Respondents.

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

THIS CAUSE was submitted upon the application of the National Labor Relations Board for entry of a consent judgment against Respondents, 9th Avenue Hotel Property Holding LLC d/b/a Cassa Hotel Times Square, VIP Concierge, Inc., and A&R Building Solution, Inc., as Joint Employers and Local 713 International Brotherhood of Trade Unions dated April 4, 2018, in Case Nos. 02-CA-201747, 02-CA-201748 and 02-CB-201749, and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Second Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the

Respondents, 9th Avenue Hotel Property Holding LLC d/b/a Cassa Hotel Times Square, VIP Concierge, Inc., and A&R Building Solution, Inc., as Joint Employers and Local 713 International Brotherhood of Trade Unions their officers, agents, successors, assigns, and representatives shall abide by and perform the directions of the Board set forth in its order. (See Attached Order and Appendix).

Mandate shall issue forthwith.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

The seal of the United States Second Circuit Court of Appeals is circular. It features a red outer ring with the words "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom, separated by two small stars. The center of the seal is blue with the words "COURT OF APPEALS" in white.

NATIONAL LABOR RELATIONS BOARD

v.

9TH AVENUE HOTEL PROPERTY HOLDING LLC D/B/A CASSA HOTEL
TIMES SQUARE AND VIP CONCIERGE, INC., AND A&R BUILDING
SOLUTION, INC., AS JOINT EMPLOYERS AND LOCAL 713
INTERNATIONAL BROTHERHOOD OF TRADE UNIONS

ORDER

A. The Respondents, 9th Avenue Hotel Property Holding LLC d/b/a Cassa Hotel Times Square, New York, New York; VIP Concierge Inc., New York, New York; A&R Building Solution Inc., Brooklyn, New York, their officers, agents, successors and assigns, shall

1. Cease and desist from

- (a) Recognizing Local 713 International Brotherhood of Trade Unions (Local 713) as the exclusive collective-bargaining representative of the bargaining unit employees involved herein, i.e., Full-time and regular part-time Housekeepers, Handy Persons, House Persons, Breakfast Attendants, Full-time and regular part-time Doormen, Front Desk Personnel and Night auditors working at Cassa Hotel, 515 9th Avenue, New York, New York, unless and until that labor organization is duly certified by the Board as the exclusive representative of such employees.
- (b) Maintaining or giving any force or effect to the collective-bargaining agreements with Respondent Local 713, including union-security and/or dues check off clauses, or to any extension, renewal, modification, or superseding agreements, unless and until Respondent Local 713 is duly certified by the Board as the exclusive bargaining representative of the unit employees, *provided that* nothing in the Order shall authorize or require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment which may have been established pursuant to the performance of that agreement and that the ordered cessation shall be without prejudice to the insurance coverage provided in those agreements.

- (c) Threatening employees with discharge.
- (d) Discharging or otherwise discriminating against employees because of their Section 7 activity.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Make whole employees for all losses they incurred as a result of VIP Concierge and A&R Building Solution's unfair labor practices, including (i) payment of the sums of \$15,860 (backpay), less statutory deductions, and \$315 (daily compound interest) to Arisnelda Rodriguez, to whom we have offered reinstatement to her former position of employment, and Rodriguez, having accepted our offer, returned to work on January 4, 2018; (ii) within 14 days of the date of the Board's Order, remove from our files any reference to the unlawful discharge of Arisnelda Rodriguez, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against her in any way; and, (iii) jointly and severally with Local 713, reimburse all present and former employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the July 1, 2017 collective-bargaining agreements, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).
- (b) Within 14 days of service by the Region, post at its facility located at 515 Ninth Avenue, New York, New York 10018 (Respondent Cassa Hotel's facility), copies of the attached Notice (Notice) marked "Appendix A." Copies of the Notice, on forms provided by Region 2, after being signed by the Respondents' authorized representatives, shall be posted for a period of sixty (60) days, in conspicuous places, including all places where notices to its employees are normally posted. The Respondents will take reasonable steps to ensure that the notices

are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, any or all Respondents has or have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at the Respondent's facility since June 12, 2017.

- (c) Within twenty (20) days of the issuance of the Board's Order, file with the Regional Director of Region 2 of the Board, a sworn affidavit from a responsible official describing with specificity the manner in which the Respondents have complied with the terms of the Board's Order, including the locations of the posted documents.

B. Respondent Local 713, International Brotherhood of Trade Unions, Garden City, New York, its officers, agents, and representatives shall:

1. Cease and desist from:

- (a) Accepting recognition from employers, or executing and giving effect to collective-bargaining agreements with Respondents Cassa Hotel, VIP Concierge, A&R Building Solution, or any other employer, containing a union-security clause requiring membership in Respondent Local 713 as a condition of employment, at a time when Local 713 does not represent an uncoerced majority of such employees in an appropriate unit.
- (b) Seeking dues and fees from the wages of employees of Respondents Cassa Hotel, VIP Concierge, A&R Building Solution, or any other employer under a dues-checkoff clause included in a collective-bargaining agreement based on recognition accorded at a time when Local 713 does not represent an uncoerced majority of its employees in an appropriate unit.
- (c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Jointly and severally with Respondents Cassa Hotel, VIP Concierge, and A&R Building Solution, reimburse all present and former employees for all initiation fees, dues, and other moneys paid by them or withheld from them pursuant to the July 1, 2017 collective-bargaining agreements, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).
- (b) Within 14 days of service by the Region, post at its facility located at 400 Garden City Plaza #106, Garden City, New York 11530 (Respondent Local 713's facilities), copies of the attached Notice (Notice) marked "Appendix B." Copies of the Notice, on forms provided by Region 2, after being signed by Respondent Local 713's authorized representatives, shall be posted for a period of sixty (60) days, in conspicuous places, including all places where notices to its members are normally posted. Respondent Local 713 will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, Respondent Local 713 has gone out of business or closed the facility involved in these proceedings, Respondent Local 713 shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at the Respondent's facility since June 12, 2017. Respondent Local 713 will provide additional signed copies of the notice to the Respondent Employers, which it can choose to post at its facility.
- (c) Within twenty (20) days of the issuance of the Board's Order, file with the Regional Director of Region 2 of the Board, a sworn affidavit from a responsible official describing with specificity the manner in which Respondent Local 713 has complied with the terms of the Board's Order, including the locations of the posted documents.

APPENDIX A

NOTICE TO EMPLOYEES

**POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten you with discharge or discharge you in retaliation for engaging in protected, concerted or union activity.

WE WILL NOT interfere with employees' right to engage in protected, concerted or union activity by making statements that your activities are being monitored.

WE WILL NOT assist or contribute support to Local 713, by recognizing or contracting with such labor organization as the bargaining representative of our employees unless and until it has been certified as such representative by the NLRB.

WE WILL NOT give effect to our July 1, 2017, contract with Local 713, IBOTU, or to any renewal, extension or modification thereof, but we are not authorized or required to withdraw or eliminate any wage rates or other benefits, terms and conditions of employment which we have given to our employees under said contract.

WE WILL NOT discriminate against employees by encouraging membership in Local 713, IBOTU or any other labor organization by discharging employees because they fail to sign dues deduction authorization cards, or because they fail to pay dues under a union-security clause included in a collective-bargaining agreement with Local 713 or any other labor organization entered into based on

recognition accorded at a time when such labor organization did not represent an uncoerced majority of our employees in an appropriate unit.

WE WILL NOT deduct union dues and fees from the wages of employees for Local 713, IBOTU or any other labor organization under a dues-checkoff clause included in a collective-bargaining agreement with Local 713 or any other labor organization entered into based on recognition accorded at a time when such labor organization did not represent an uncoerced majority of our employees in an appropriate unit.

WE WILL NOT in any like or related manner interfere with your rights listed above.

WE WILL remove from our files any reference to the unlawful termination of Arisnelda Rodriguez and notify her, in writing, that this has been done and that this action will not be used against her in any way.

WE WILL make Arisnelda Rodriguez whole for any loss of earnings and other benefits suffered as a result of the Employer's unlawful action against her, plus interest.

WE WILL withdraw and withhold all recognition from Local 713, IBOTU, as the collective-bargaining representative of our employees, unless and until Local 713, IBOTU has been certified by the Board.

WE WILL reimburse all of our employees, former and present, for dues and other monies unlawfully exacted from them under our contract with Local 713, IBOTU, unless and until Local 713, IBOTU has been certified by the Board.

**9TH AVENUE HOTEL PROPERTY HOLDING LLC
D/B/A CASSA HOTEL TIMES SQUARE, VIP CONCIERGE INC. AND
A&R BUILDING SOLUTION INC., AS JOINT EMPLOYERS**

The Board's decision can be found at www.nlr.gov/case/02-CA-201747 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940

APPENDIX B

NOTICE TO MEMBERS

**POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with your employer on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT accept recognition from employers, or execute and give effect to collective-bargaining agreements with Cassa Hotel, VIP Concierge, A&R Building Solution, or any other employer, containing a union-security clause requiring membership in our labor organization as a condition of employment, at a time when our labor organization does not represent an uncoerced majority of such employees in an appropriate unit.

WE WILL NOT seek dues and fees from the wages of employees of Cassa Hotel, VIP Concierge, A&R Building Solution, or any other employer under a dues-checkoff clause included in a collective-bargaining agreement based on recognition accorded at a time when we did not represent an uncoerced majority of employees in an appropriate unit.

WE WILL NOT in any other manner interfere with your rights listed above.

WE WILL reimburse all of our members, former and present, for dues and other monies unlawfully exacted from them under our contracts with VIP Concierge and A&R Building Solution.

INTERNATIONAL BROTHERHOOD OF TRADE UNIONS LOCAL 713

The Board's decision can be found at www.nlrb.gov/case/02-CA-201747 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.